

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WILLIAM JARAMILLO,

96 CV 5303

Petitioner,

-against-

MEMORANDUM
AND
ORDER

UNITED STATES OF AMERICA,

Respondent.

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WILLIAM JARAMILLO,
Reg. No. 44237-053
F.C.I. Fort Dix
P.O. Box 7000 - Unit 5811
Fort Dix, New Jersey 08640
petitioner pro se

ZACHARY W. CARTER, United States Attorney
Eastern District of New York
(Ronald G. White, of counsel)
1 Pierrepont Plaza
Brooklyn, New York 11201
for respondent

NICKERSON, District Judge:

Petitioner William Jaramillo brought this
proceeding pursuant to 28 U.S.C. § 2255 to correct his
sentence.

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In May 1992 petitioner began serving a state sentence of two to four years on a conviction for attempted sale of a controlled substance. On about May 17, 1994, before he had completed his state sentence, petitioner was transferred to federal custody to answer charges in the present case. On July 7, 1994 he pleaded guilty to an information charging him with illegal entry into the United States after his deportation, in violation of 8 U.S.C. § 1326(b)(1).

His counsel argued at the sentencing that the court should depart downward so that petitioner's combined sentence of imprisonment would be 60 months. The court declined to depart downward and imposed a sentence of 60 months, to run concurrently with the undischarged state sentence, two years supervised release, and a \$50 special assessment.

Petitioner appealed to the Second Circuit, which affirmed, noting that this court considered and rejected the proffered reasons for departure. Petitioner then applied to this court to amend the

judgment of conviction entered in this case. The court denied the application on September 11, 1996.

Petitioner now raises for the fourth time the argument that the commencement of his sentence should be May 6, 1992, the date his state sentence was imposed, rather than the actual date of the federal sentence on January 6, 1995.

There is no merit to the petition. The court rejected counsel's argument that the federal sentence should be made to run from May 6, 1992. The court imposed a 60-month sentence to run concurrently with the undischarged portion of the state sentence.

The petition is denied. A certificate of appealability will not be issued because petitioner has not made a substantial showing of deprivation of a constitutional right. See 28 U.S.C. § 2253; Reyes v. Keane, 90 F.3d 676, 680 (2d Cir. 1996).

So ordered.

Dated: Brooklyn, New York
April 22, 1998

Eugene H. Nickerson
Eugene H. Nickerson, U.S.D.J.